

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEBRA A. GEORGE,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

Case No. C04-5184FDB

REPORT AND  
RECOMMENDATION

Noted for September 16, 2005

This matter has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrate Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter has been briefed by the parties. The undersigned now submits the following report, recommending that the Court affirm the administration's decision to deny plaintiff's request for social security benefits.

**INTRODUCTION**

Plaintiff, Debra George, is approximately 48 years of age. The record indicates that claimant has a high school education with past relevant work as a mill worker, and from 1990 through 1999 she worked at Klein Bikes, where she assembled bicycles. Plaintiff alleges she has been unable to work since April 1999, due to Obsessive Compulsive Disorder ("OCD"), forgetfulness, inability to drive, inability to stand or sit for long periods of time, and an injury to her hip bone. Tr. 47.

Plaintiff filed an application for Disability Insurance Benefits and a period of disability on August

1 29, 2001. Tr. 12. The Commissioner denied her initial application on January 15, 2002, (Tr. 19), and again  
2 upon reconsideration on March 20, 2002. Tr. 24. Following proper notice, a hearing was held on April 16,  
3 2003, before an administrative law judge ("ALJ"). Tr. 232-249. The ALJ issued a decision denying  
4 claimant's application on June 25, 2003. Tr. 12-16A. Claimant made a timely request for review to the  
5 Appeals Council on August 12, 2003. Tr. 230-1. The Appeals Council denied claimant's request for  
6 review on February 2, 2004, thereby exhausting claimant's administrative remedies. Tr. 5-6.

7 Plaintiff brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as  
8 amended, 42 U.S.C. § 405(g), to obtain judicial review of the final decision denying plaintiff's application  
9 for benefits. Plaintiff specifically contends the ALJ's finding at step-four of the evaluation process – that  
10 she retains the residual functional capacity to return and perform her past relevant work – is not properly  
11 supported by evidence in the record.

## 12 DISCUSSION

13 The Commissioner's decision must be upheld if the ALJ applied the proper legal standard and the  
14 decision is supported by substantial evidence in the record. Drouin v. Sullivan, 966 F.2d 1255, 1257 (9<sup>th</sup>  
15 Cir. 1992); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9<sup>th</sup> Cir. 1986). Substantial evidence is such relevant  
16 evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales,  
17 402 U.S. 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9<sup>th</sup> Cir. 1985). It is more than a scintilla  
18 but less than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9<sup>th</sup> Cir. 1975); Carr v.  
19 Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than one rational  
20 interpretation, this Court must uphold the Commissioner's decision. Allen v. Heckler, 749 F.2d 577, 579  
21 (9<sup>th</sup> Cir. 1984).

22 At step-four in the evaluation process, the ALJ must determine if an impairment(s) prevents the  
23 claimant from doing past relevant work and thus, must determine the claimant's residual functional  
24 capacity ("RFC"). If the ALJ finds that the claimant has not shown that she is incapable of performing past  
25 relevant work, the claimant is not disabled for social security purposes and the evaluation process ends at  
26 this point. 20 C.F.R. § 404.1520(e). Plaintiff bears the burden to establish that she cannot perform past  
27 relevant work. Roberts v. Shalala, 66 F.3d 179, 184 (9<sup>th</sup> Cir. 1995), *cert. denied*, 116 S.Ct. 1356 (1996).

28 Here, the ALJ found plaintiff capable of working as a mill worker and/or bicycle assembler. The

1 ALJ wrote:

2 Steps four and five require a determination of whether the claimant has retained the residual  
3 functional capacity to perform past relevant work, or other work existing in significant numbers  
4 in the national economy. In order to make these determinations, it is necessary to assess the  
claimant's mental and physical residual functional capacity. Residual functional capacity is what  
an individual can still do despite the limitations from his or her impairments.

5 The claimant testified that she stopped working because of an obsessive-compulsive disorder.  
6 She said that she could not sit, drive, keep accurate count of things, and that she would wander  
7 off. She said that it was hard for her to get to work, her knees would "go" and it was hard for her  
to stand. The claimant said that she did not like to be alone, but she was afraid people would  
hurt her, and she worried a great deal. She said that she compulsively checked her stove,  
windows, and doors, and was unable to concentrate enough to read.

8 In assessing the claimant's residual functional capacity, consideration must be given to subjective  
9 allegations. This raises the issue of credibility. In judging the credibility of the claimant, the  
undersigned has weighed her testimony and, in doing so, considered all of the circumstances  
10 under which she has testified; the extent to which she is contradicted or corroborated by other  
credible evidence; her prior work record; the nature of her symptoms and medical treatment; her  
11 daily activities; and any other factors concerning the claimant's functional limitations and  
restrictions (20 C.F.R. §404.1529 and SSR 96-7p).

12 Here, the claimant's statements concerning her impairments and limitations are not entirely  
13 credible in light of information contained in the medical reports and other evidence of record.

14 In June 2000 the claimant had a medical examination. At that time she weighed 227 pounds, but  
she had no impairment other than her morbid obesity and other mild symptoms (exhibit 7F:4-5).  
15 At that time she alleged some anxiety and panic attacks, treated with Paxil (exhibit 7F:3). In  
September 2001 the claimant alleged that she had exacerbation of her obsessive thoughts when  
16 she was off Paxil (exhibit 10F:2). That report shows that the claimant's OCD is adequately  
managed when she complies with medication.

17 Saritha Reddy, M.D., examined the claimant in December 2001. The claimant alleged  
18 obsessive-compulsive thoughts, worries, compulsive, repetitive actions, anxieties, concentration  
problems, fatigue, and panic attacks (exhibit I 2F). She asserted that she was somewhat socially  
19 avoidant although she talked to people on the phone and visited with her husband's friends when  
they visited (exhibit 12F:4). The claimant presented as somewhat anxious but her mental status  
20 was intact and her concentration, memory, and cognition were not impaired (exhibit 12F:3).

21 Dr. Reddy diagnosed OCD and social anxiety disorder, and rated her GAF at 60 (exhibit 12F:4).  
22 Dr. Reddy concluded that the claimant could perform simple, repetitive tasks and probably more  
detailed and complex tasks. She might have difficulty with co-workers and the public,  
23 maintaining regular attendance, performing on a consistent basis, and dealing with work stresses  
(exhibit 12F:4).

24 In January 2002 the claimant was seen at Steck Medical Group for complaints of anxiety and  
obsessive thoughts. She began treatment with Celexa, and within a few days she reported that  
25 she was better (exhibit 1 3F~2-4). Again, this report shows that the claimant's symptoms are  
relieved when she complies with her treatment.

26 The claimant began treatment at Cascade Mental Health Care in January 2002. She described  
27 anxiety, physical pains, and obsessive thoughts (exhibit 14F). But her mental status examination  
was not particularly remarkable; the claimant had no significant difficulty with daily living  
28 activities, her attention span and memory were good, and she was not assessed with any  
significant social difficulty (exhibit 14F:8-12).

1 In February 2002 Saowarut Kittimongcolporn, M.D., examined the claimant and she reiterated  
2 these symptoms, but her mental status examination was good (exhibit 14F:1-2). Dr.  
3 Kittimongcolporn diagnosed panic disorder, anxiety disorder, and obsessive-compulsive  
disorder, and rated her OAF at 50 (exhibit 14F:3). That report is considered, but the claimant's  
mental status examinations do not appear to be consistent with such a low OAF level.

4 The claimant stated that she was 5'1" tall and weighed 242 pounds, and her obesity is discussed  
5 throughout the record. But there are few signs of significant problems related to her obesity.  
6 She has been able to move about without difficulty. The claimant has alleged past low back  
7 pain, but examinations and clinical studies were essentially normal, at most showing only mild  
8 findings without neurological impact (exhibit 11F). M.W. Strohbach, M.D., reported in  
November 2001 that the claimant had chronic low back pain and difficulty sitting or standing, by  
her report, and subjective right arm numbness. But her examination was normal (exhibit 11F:1-  
3). The claimant's obesity and alleged back pain are not severe impairments.

9 The claimant has a history of chronic urinary frequency related to cystitis; treated successfully  
10 with medication (exhibits 1F; 4F; 5F). A CT scan in August 2001 showed that the claimant had  
11 some fatty liver infiltration, uterine enlargement, and she was status-post cholecystectomy  
12 (exhibit 9F:2). But the claimant did not have significant symptoms and these impairments are  
not severe. The claimant also has reported severe headaches from time to time (exhibit 6F). but  
there is little evidence of significant chronic limitations from her headaches. She does not have a  
severe headache disorder. Other disorders are mentioned in the record (exhibit 18F) but they are  
not severe or did not last for the 12-month duration requirement.

13 These reports suggest that the claimant has some medical impairments and limitations, but not to  
14 the point of disability. Other evidence supports that conclusion.

15 The claimant told Dr. Reddy that she took the pets out for walks and prepared meals, and  
16 managed her personal care (exhibit 12F). Other medical reports suggest that the claimant has no  
problem with daily activities (exhibit I 4F).

17 Third party reports have been considered. The claimant's mother reported that the claimant had  
18 social difficulties, fears of being alone conflicting with anxiety when around others, deficits in  
19 memory and concentration, and suspiciousness of others (exhibits 6E; 8F). These reports are  
20 considered credible to the extent that they are consistent with the medical evidence reviewed  
above. The evidence suggests that the claimant has some difficulty with the public, but the  
medical reports indicated that she can relate to others as necessary, she can leave the home, and  
her mentation and cognitive functioning is intact.

21 With respect to mental impairments, another DDS source, Janis Lewis, Ph.D., reviewed the  
22 claimant's file in January 2002 and reported that she had reported OCD and a provisional  
23 somatoform disorder. These impairments caused moderate limitations in daily living activities,  
24 social functioning, and concentration, persistence, or pace. There were no episodes of  
decompensation (exhibit 1 SF). With respect to specific limitations, Dr. Lewis reported that the  
claimant could perform simple and some complex tasks, and work away from the public; she  
could sustain attention for two hours and adapt to changes if they were infrequent and not sudden  
(exhibit 16F). The DDS assessment is consistent with the evidence and is given great weight.

25 Based on an evaluation of the credible evidence, the undersigned finds that the claimant has  
26 retained a residual functional capacity without physical limitations. She can understand,  
27 remember and carry out simple instructions and make simple work-related decisions necessary to  
28 function in unskilled work; respond appropriately to supervisors, co-workers, and usual work  
situations; and deal with changes in a routine work setting (not dealing with the general public).  
That assessment is consistent with the DDS evaluation.

Consideration must next be given to the question of whether the claimant retains the residual

1 functional capacity to return to her past relevant work. Born on August 24, 1956, the claimant  
2 has a high school education and some college. The claimant has reported past work in a mill, on  
the green chain and as a veneer puller. She also did various jobs in bicycle manufacturing.

3 At the hearing, a vocational expert, Mary Minton, M.A., testified that the claimant's past work in  
4 bicycle assembly was unskilled, light work; she worked in a mill as green chain puller (medium,  
unskilled work) and veneer puller (medium-heavy, unskilled).

5 The evidence supports a finding that the claimant's past work as a mill worker and in bicycle  
6 assembly did not require the performance of work activities precluded by her medically  
determinable impairments, and that she has continued to be able to work in those occupations.  
7 She can thus return to the type of work she performed in the past. Because the claimant can  
return to past relevant work, she is not disabled within the meaning of the Social Security Act. It  
8 is therefore unnecessary to consider the remaining step in the sequential evaluation process.

9 Tr. 13-16.

10 At the hearing the ALJ, in the presence of the vocational expert, questioned Ms. George about her  
11 past work experience. (Tr. 237-240). After taking Ms. George's testimony, the ALJ questioned the  
12 vocational expert. The ALJ specifically asked the expert whether or not she had enough information about  
13 the two jobs Ms. George worked in the past (Tr. 246) and the expert classified the two positions as light,  
unskilled work (bicycle assembly) and medium, unskilled work (mill worker)(Tr. 247-248).

14 As noted above, the ALJ reviewed the medical evidence, along with plaintiff's subjective complaints,  
15 and concluded she did not have any physical limitations and despite some non-exertional limitations, she  
16 retained the ability to perform unskilled work. The opinions of Dr. Reddy and Dr. Lewis support the  
17 ALJ's analysis. Dr. Reddy found plaintiff could complete three step commands and rated her global  
18 functioning at the high end of moderate. Dr. Reddy also predicted that she would improve with treatment  
19 over nine to twelve months (Tr. 180). Dr. Reddy concluded Plaintiff could perform simple and repetitive  
20 tasks, perhaps more complex tasks, and accept instruction from supervisors, but might have trouble with  
21 consistency, attendance, and interacting with coworkers and the general public (Tr. 180). Dr. Lewis rated  
22 her as moderately impaired in daily activities, concentration, and social functioning (Tr. 210) and he  
23 determined that plaintiff could perform regular work, away from the public, performing simple and  
24 sometimes complex tasks, sustaining attention in two hour intervals and adapting to changes that are not  
25 too sudden or frequent (Tr. 216). Both opinions support the ALJ's decision.

## 26 CONCLUSION

27 The ALJ's finding that Ms. George is capable of returning to work as a mill worker or bicycle  
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1 assembler is properly supported by substantial evidence. Therefore, the Court should affirm the  
2 administration's decision.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties  
4 shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P. 6.  
5 Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn,  
6 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set  
7 the matter for consideration on **September 16, 2005**, as noted in the caption.

8 DATED this 26th day of August, 2005.

9 /s/ J. Kelley Arnold  
10 J. Kelley Arnold  
11 U.S. Magistrate Judge  
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